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Compendium of Essential Legal Principles From His
Opinions as a Justice on the West Virginia Supreme
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Lawyer Disciplinary Law

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parties as to the accuracy and relevancy of the information.”²⁸⁸

C. *Taking Juveniles into Custody*

The case of *State v. Todd Andrew H.*²⁸⁹ required that Justice Cleckley clarify the statutory procedure for taking a juvenile into custody without a warrant or court order:

Under W. Va. Code, 49-5-8(b)(3) (1994), a juvenile may be taken into “custody” without a warrant or court order if the law enforcement official has reasonable grounds to believe the child is a runaway without just cause from the child’s parents and the health, safety, and welfare of the child is endangered. Thus, the mere fact that a juvenile is a runaway is insufficient to take a child into custody without a warrant or court order. The arresting officer also reasonably must believe the runaway’s health, safety, and welfare are also in jeopardy. To satisfy this latter requirement, there must be objective evidence that the juvenile: (1) was behaving in a self-destructive way; (2) was exposed to imminent physical harm; (3) was under the influence of drugs or alcohol; or (4) was incoherent and confused. In the absence of these types of circumstances, an officer should either obtain an arrest warrant or court order or deliver the juvenile to his or her parents.²⁹⁰

IX. LAWYER DISCIPLINARY LAW

The case of *Lawyer Disciplinary Board v. Vieweg*²⁹¹ required creating a middle ground when a recommendation conflict exists between the Office of Disciplinary Counsel and the Hearing Panel Subcommittee:

Where a conflict exists between Disciplinary Counsel and the Hearing Panel Subcommittee of the Lawyer Disciplinary Board with regard to the recommendations concerning a petition for

²⁸⁸ *Id.* at Syl. Pt. 2.

²⁸⁹ 474 S.E.2d 545 (W. Va. 1996).

²⁹⁰ *Id.* at Syl.

²⁹¹ 461 S.E.2d 60 (W. Va. 1995).

reinstatement to the practice of law or other disciplinary proceedings, Disciplinary Counsel shall notify the Hearing Panel Subcommittee of the existence of the conflict. If the conflict is not resolved in advance, the Hearing Panel Subcommittee shall have the right to representation by separate counsel before this Court upon review of the petition.²⁹²

X. JUDICIAL DISCIPLINARY LAW

A. *Magistrates*

*In re Browning*²⁹³ held,

[e]xcept in very limited circumstances, it is improper for a magistrate to act in a case in which the magistrate cannot remain neutral and detached. Therefore, Syllabus Point 2 of *In re Pauley*, 173 W.Va. 475, 318 S.E.2d 418 (1984), quoted in Syllabus Point 4 of *In re Markle*, 174 W.Va. 550, 328 S.E.2d 157 (1984), is limited to situations in which a magistrate is not otherwise disqualified.²⁹⁴

Browning also ruled that “[i]t is not a violation of the Judicial Code of Ethics or the Code of Judicial Conduct to fail to follow mandatory criminal procedure if a magistrate is disqualified from hearing the matter.”²⁹⁵

B. *Public Remarks by Judicial Officer*

The case of *In re Hey*²⁹⁶ established a bright line for public judicial comments. Justice Cleckley wrote that

[t]he State’s interests in maintaining and enforcing the judicial canons against judges’ speech are sufficiently served by their

²⁹² *Id.* at Syl. Pt. 5.

²⁹³ 452 S.E.2d 34 (W. Va. 1994).

²⁹⁴ *Id.* at Syl. Pt. 4.

²⁹⁵ *Id.* at Syl. Pt. 5.

²⁹⁶ 452 S.E.2d 24 (W. Va. 1994).